

Senate Bill No. 127

CHAPTER 500

An act to amend Section 104113 of the Health and Safety Code, relating to automatic external defibrillators.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 127, Calderon. Automatic external defibrillators: health studios.

Existing law, until July 1, 2012, requires every health studio, as defined, to acquire an automatic external defibrillator and to meet specified training and maintenance standards relating to that device. Under existing law, when a health studio employee uses an automatic external defibrillator, as specified, the owners, managers, employees, or otherwise responsible authorities of the facility shall not be liable for civil damages resulting from an act or omission in the course of rendering that emergency care or treatment, as required.

This bill would extend these provisions indefinitely. This bill would also provide that a health studio that allows its members access to its facilities during operating hours when employees trained in the use of automatic external defibrillators are not on the facility premises, waives the above exemption from liability for civil damages and the affirmative defense of primary assumption of the risk, whether express or implied, as to a claim arising out of the absence of trained staff.

This bill would also require a health studio that allows its members access when an employee is not present to comply with specified requirements, including, but not limited to, that it deny access to members when an employee is not present if the facility is larger than 6,000 square feet, and that on or before January 1, 2012, and before January 1 of each of the following three years, the health studio would be required to report to the Legislature certain information as prescribed.

The people of the State of California do enact as follows:

SECTION 1. Section 104113 of the Health and Safety Code is amended to read:

104113. (a) Every health studio, as defined in subdivision (h), shall acquire, maintain, and train personnel in the use of, an automatic external defibrillator pursuant to this section.

(b) An employee of a health studio who renders emergency care or treatment is not liable for civil damages resulting from the use, attempted

use, or nonuse of an automatic external defibrillator, except as provided in subdivision (f).

(c) When an employee uses, does not use, or attempts to use an automatic external defibrillator consistent with the requirements of this section to render emergency care or treatment, the members of the board of directors of the facility shall not be liable for civil damages resulting from an act or omission in rendering the emergency care or treatment, including the use or nonuse of an automatic external defibrillator, except as provided in subdivision (f).

(d) Except as provided in subdivisions (f) and (g), when an employee of a health studio renders emergency care or treatment using an automatic external defibrillator, the owners, managers, employees, or otherwise responsible authorities of the facility shall not be liable for civil damages resulting from an act or omission in the course of rendering that emergency care or treatment, provided that the facility fully complies with subdivision (e).

(e) Notwithstanding Section 1797.196, in order to ensure public safety, a health studio shall do all of the following:

(1) Comply with all regulations governing the placement of an automatic external defibrillator.

(2) Ensure all of the following:

(A) The automatic external defibrillator is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, or the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(B) The automatic external defibrillator is checked for readiness after each use and at least once every 30 days if the automatic external defibrillator has not been used in the preceding 30 days. The health studio shall maintain records of these checks.

(C) A person who renders emergency care or treatment to a person in cardiac arrest by using an automatic external defibrillator activates the emergency medical services system as soon as possible, and reports the use of the automatic external defibrillator to the licensed physician and to the local EMS agency.

(D) For every automatic external defibrillator unit acquired, up to five units, no less than one employee per automatic external defibrillator unit shall complete a training course in cardiopulmonary resuscitation and automatic external defibrillator use that complies with the regulations adopted by the Emergency Medical Services Authority and the standards of the American Heart Association or the American Red Cross. After the first five automatic external defibrillator units are acquired, for each additional five automatic external defibrillator units acquired, a minimum of one employee shall be trained beginning with the first additional automatic external defibrillator unit acquired. Acquirers of automatic external defibrillator units shall have trained employees who should be available to

respond to an emergency that may involve the use of an automatic external defibrillator unit during staffed operating hours. Acquirers of automatic external defibrillator units may need to train additional employees to ensure that a trained employee is available at all times.

(E) There is a written plan that exists that describes the procedures to be followed in the event of an emergency that may involve the use of an automatic external defibrillator, to ensure compliance with the requirements of this section. The written plan shall include, but not be limited to, immediate notification of 911 and trained office personnel at the start of automatic external defibrillator procedures.

(3) A health studio that allows its members access to its facility during times when it does not have an employee on the premises shall do all of the following:

(A) Require that all employees who work on the health studio's premises complete a training course, within 30 days of beginning employment, in cardiopulmonary resuscitation and automated external defibrillator use, that complies with the regulations adopted by the Emergency Medical Services Authority, and the Standards of the American Heart Association or the American Red Cross.

(B) Ensure that a trained employee is on the health studio's premises for no fewer than 50 hours per week.

(C) Inform a member, at the time the member contracts for the use of the health studio, that a trained employee will not be on the health studio's premises at all times.

(D) (i) On or before January 1, 2012, and before January 1 of each of the following three years, the health studio shall provide a report to the Assembly and Senate Judiciary Committees of the Legislature that contains the following:

(I) The average number of hours per week that the health studio is staffed.

(II) The average number of hours per week that the health studio was staffed prior to the adoption of this section.

(III) The total number of reported cardiac incidents that have occurred during unstaffed hours, and whether any of these incidents resulted in death.

(ii) The franchisor for a chain of franchised health studios shall collect and report the information pursuant to this subparagraph on behalf of its franchised health studios operated in this state.

(E) Deny access to the health studio when an employee is not present if the health studio operates in a space that is larger than 6,000 square feet.

(f) Subdivisions (b), (c), and (d) do not apply in the case of personal injury or wrongful death that results from gross negligence or willful or wanton misconduct on the part of the person who uses, attempts to use, or maliciously fails to use an automatic external defibrillator to render emergency care or treatment.

(g) A health studio that allows its members access to its facilities during operating hours when employees trained in the use of automatic external defibrillators are not on the facility premises, waives the provisions of subdivision (d) and the affirmative defense of primary assumption of the

risk, whether express or implied, as to a claim arising out of the absence of trained staff.

(h) For purposes of this section, “health studio” means a facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis. “Health studio” does not include a hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges.